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# Yeoh Oon Theam v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO P-09–163–05 OF 2015
TENGKU MAIMUN, VERNON ONG AND ABDUL KARIM ABDUL JALIL JJCA
28 MARCH 2016

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*Criminal Law — Appeal — Appeal against conviction and sentence — Appellant charged with offences relating to false statements under s 199 of the Penal Code — Appellant convicted and sentenced of both charges by trial court — Whether subject matters of both charges sustainable — Whether there was misdirection in law and in fact on part of learned judicial commissioner — Whether Radhi's direction complied with — Whether miscarriage of justice occurred — Penal Code s 199 — Statutory Declarations Act 1960*

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E The appellant was charged with two offences under s 199 of the Penal Code ('the Code') relating to false statements made in: (a) a petition affirmed for the purpose of obtaining letters of administration *de bonis non* for the estate of Lim Mah Ee @ Baba Mahee ('P8'); and (b) a statutory declaration affirmed by the appellant ('P6'). The magistrate court acquitted and discharged the appellant, however on appeal; the appellant was convicted and sentenced on both charges, hence this appeal. The appellant argued that P8 and P6 were incomplete as both of the exhibits did not contain the exhibits, thus inadmissible. It was also argued that P6 was not a statutory declaration because: (i) it was in non-compliance with ss 2 and 3 of the Statutory Declarations Act 1960 ('the Act'); and (ii) it was in non-compliance with the form in the Schedule of Declaration Ordinance 1949, thus, P6 was inadmissible. The appellant further argued that the conviction was unsafe because the evidence was not viewed objectively and that failure to do so would amount to misdirection. In reply, the respondent submitted that the absence of the exhibits did not void the charges against the appellant as the respondent was only relying on the underlined portions of P8 and P6 which did not refer to the exhibits. Further, the respondent submitted that the appellant was not a descendant and beneficiary of the estate of Lim Mah Ee, and despite this fact, the appellant had put himself out as a person capable of being an administrator when he was not entitled to do so.

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**Held,** allowing the appeal and acquitting and discharging the appellant:

(1) P6 was incomplete and was not a statutory declaration within the meaning of the Act. As such, the subject matter of the second charge was

without foundation and was clearly unsustainable. The court thus held that there was a misdirection in law and in fact on the part of the learned judicial commissioner ('JC') in convicting the appellant on the second charge as there was clearly no evidential basis to support the second charge (see paras 22 & 26).

(2) P8 was incomplete. An exhibit forming the subject matter of a charge under s 199 of the Code must be exhibited in full. In this case, it was not disputed that the four exhibits referred to in P8 were not produced. It was the duty of the prosecution to produce P8 in full in order to make out a prima facie case against the appellant. As the appellant could be convicted on the prima facie evidence it must had reached a standard which was capable of supporting a conviction beyond reasonable doubt. There was no duty on the appellant to call any evidence (see para 27).

(3) The learned JC failed to comply with the *Radhi*'s direction (*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169) and give reasons as to why even if the court did not accept or believe the defence explanation, why it nevertheless failed to raise a reasonable doubt on the prosecution's case (see para 29).

(4) The learned JC was bound to, but did not view the whole of the evidence objectively and from all angles, with the result that the appellant had lost the chance which was fairly open to him of being acquitted. As such, this non-direction amounted to misdirection. In these circumstances, a miscarriage of justice may well had occurred (see para 30).

**[Bahasa Malaysia summary**

Perayu telah dituduh dengan dua kesalahan di bawah s 199 Kanun Keseksaan ('Kanun') berkaitan pernyataan palsu yang dibuat di dalam: (a) petisyen yang disahkan bagi tujuan mendapatkan surat pentadbiran *de bonis non* bagi estet Lim Mah Ee @ Baba Mahee ('P8'); dan (b) perisytiharan statutori disahkan oleh perayu ('P6'). Mahkamah majistret membebaskan dan melepaskan perayu, walau bagaimanapun atas rayuan; perayu disabitkan dan dihukum atas kedua-dua tuduhan, maka rayuan ini. Perayu berhujah bahawa P8 dan P6 tidak siap kerana kedua-dua ekshibit tidak mengandungi ekshibit tersebut, oleh itu tidak boleh diterima. Ia juga dihujahkan bahawa P6 bukan perisytiharan statutori kerana: (i) ia tidak mematuhi ss 2 dan 3 Akta Akuan Berkanun 1960 ('Akta'); dan (ii) ia tidak mematuhi borang dalam Jadual Ordinan Deklarasi 1949, oleh itu, P6 tidak boleh diterima. Perayu selanjutnya berhujah bahawa sabitan adalah tidak selamat kerana keterangan tidak dilihat secara objektif dan kegagalan untuk berbuat sedemikian merupakan salah arah. Dalam menjawab, responden berhujah bahawa ketiadaan ekshibit tidak membatalkan tuduhan terhadap perayu kerana responden hanya bergantung ke atas bahagian yang digariskan P8 dan P6 yang mana tidak merujuk kepada ekshibit tersebut. Selanjutnya, responden berhujah bahawa perayu bukan

keturunan dan benefisiari estet Lim Mah Ee, dan meskipun fakta ini, perayu telah meletakkan dirinya sebagai orang yang berkebolehan menjadi pentadbir apabila dia tidak berhak berbuat sedemikian.

**Diputuskan,** membenarkan rayuan dan melepaskan dan membebaskan perayu:

(1) P6 adalah tidak siap dan bukan perisytiharan statutori dalam maksud Akta. Oleh itu, perkara tuduhan kedua adalah tanpa asas dan jelas tidak boleh dikekalkan. Mahkamah oleh itu memutuskan bahawa terdapat salah arah dari segi undang-undang dan fakta oleh pihak pesuruhjaya kehakiman ('PK') dalam menyabitkan perayu atas tuduhan kedua kerana jelas tiada asas nyata untuk menyokong tuduhan kedua (lihat perenggan 22 & 26).

(2) P8 adalah tidak siap. Ekshibit yang membentuk perkara tuduhan di bawah s 199 Kanun mesti diekshibitkan secara penuh. Dalam kes ini, ia tidak dipertikaikan bahawa keempat-empat ekshibit yang dirujuk di dalam P8 tidak dikemukakan. Ia adalah tugas pihak pendakwaan untuk mengemukakan P8 dengan penuh untuk membuat kes prima facie terhadap perayu. Memandangkan perayu boleh disabitkan atas keterangan prima facie ia mesti mencapai standard yang berkebolehan untuk menyokong sabitan melampaui keraguan munasabah. Tidak terdapat tugas ke atas perayu untuck memanggil apa-apa keterangan (lihat perenggan 27).

(3) PK yang bijaksana gagal untuk mematuhi arahan *Radhi* (*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169) dan memberi alasan mengapa walaupun mahkamah tidak menerima atau percaya penjelasan pembelaan, mengapa ia walau bagaimanapun gagal untuk membangkitkan keraguan munasabah ke atas kes pihak pendakwaan (lihat perenggan 29).

(4) PK yang bijaksana adalah terikat, tetapi tidak mengambil kira keseluruhan keterangan secara objektif dan dari semua sudut, dengan keputusan bahawa perayu telah terlepas peluang yang mana adil terbuka kepadanya untuk dibebaskan. Dengan itu, tiada arahan merupakan salah arah. Dalam keadaan ini, ketidakadilan mungkin telah berlaku (lihat perenggan 30).]

**Notes**

For cases on appeal against conviction and sentence, see 4(1) *Mallal's Digest* (5th Ed, 2015) paras 42–83.

**Cases referred to**

*Balachandran v PP* [2005] 2 MLJ 301, FC (refd)
*Chan King Yu v PP* [2009] 1 MLJ 457; [2009] 1 CLJ 601, FC (refd)

*Chia Hock Seng v Thor Keng Hong & Ors* [1970] 2 MLJ 12 (refd)
*Chua Beow Huat v PP* [1970] 2 MLJ 29 (refd)
*Goh Ah Yew v PP* [1949] 1 MLJ 150 (refd)
*Gooi Loo Seng v PP* [1993] 2 MLJ 137, SC (refd)
*Hardial Singh Hari Singh v Daim Zainuddin & Ors* [1991] 1 CLJ 116, HC (refd)
*JB Jeyaratnam v Law Society of Singapore* [1988] 3 MLJ 425, PC (refd)
*Kiew Foo Mui & Ors v PP* [1995] 3 MLJ 505, SC (refd)
*Karam Chand Ganga Prasad And Anr v Union of India (UoI) And Ors* AIR 1971 SC 1244, SC (refd)
*Mohamad Radhi bin Yaakob v PP* [1991] 3 MLJ 169; [1991] 3 CLJ 2073, SC (refd)
*Mohd Johi bin Said & Anor v PP* [2005] 5 MLJ 409; [2005] 1 CLJ 389, CA (refd)
*PP v Ling Tee Huah* [1982] 2 MLJ 324 (refd)
*Tai Chai Keh v PP* [1948-1949] supp MLJ 105b, CA (refd)
*Teh Kim Chooi v Regina* [1955] 1 MLJ 37 (refd)
*Wong Hong Toy & Anor v PP* [1988] 2 MLJ 553 (refd)
*Woolmington v The Director of Public Prosecutions* [1935] AC 462, HL (refd)

**Legislation referred to**

Criminal Procedure Code s 156
Declaration Ordinance 1949
Evidence Act 1950 ss 41(d), 114(g)
Penal Code ss 199, 200
Statutory Declarations Act 1960 ss 2, 3
Statutory Declarations Act [SG] Schedule

*V Sithambaram (Gobind Singh Deo, S Prakash and Joanne Chua Tsu Fae with him) (Gobind Singh Deo & Co) for the appellant.*
*Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attoney General's Chambers) for the respondent.*

**Vernon Ong JCA:**

INTRODUCTION

**[1]** The appellant was charged with two offences under s 199 of the Penal Code relating to false statements made in a petition and a statutory declaration.

**[2]** The first charge relates to false statements contained in the underlined portions of the petition affirmed by the appellant on 10 August 1993 (exh P8) for the purposes of obtaining letters of administration *de bonis non* for the estate of Lim Mah Ee @ Baba Mahee. A copy of the petition was annexed to the first charge as *lampiran* A. The first charge reads:

i. *FIRST CHARGE: 83-696-2007*

Bahawa kamu pada 10 Ogos 1993 di Mahkamah Tinggi Sivil 3 Pulau Pinang dalam Negeri Pulau Pinang, di dalam satu petisyen yang diikrarkan oleh kamu di hadapan Pesuruhjaya Sumpah Encik Gong Ngie Hoong yang boleh diterima sebagai keterangan iaitu satu petisyen yang didaftarkan di Mahkamah tersebut, telah membuat pernyataan palsu dalam petisyen tersebut sepertimana yang digariskan dalam Lampiran 'A' yang dilampirkan bersama dan pernyataan palsu tersebut adalah berkenaan dengan satu perkara material kepada tujuan petisyen tersebut dan pernyataan palsu tersebut kamu tahu atau percaya adalah palsu atau tidak percaya sebagai benar. Oleh itu kamu telah melakukan satu kesalahan di bawah Seksyen 199 Kanun Keseksaan yang boleh dihukum di bawah cabang pertama kepada Seksyen 193 Kanun yang sama.

**[3]** The false statements referred to in the petition are set out below:

*Para. 5*

... Surat Kuasa Mentadbir dengan Wasiat telah diberi kepada Lim Hong Guan, cucu penakan simati yang juga telah meninggal dunia dengan meninggalkan harta pesaka tak ditadbirkan.

*Para. 9*

... Kam Khean Neow adalah anak penakan kepada simati yang berhak mewarisi harta pesaka simati tersebut.

*Para. 12*

Pempetisyen memohon bahawa Surat Kuasa Mentadbir De Bonis Non dengan wasiat bagi harta pusaka dan harta benda kepunyaan Baba Mahee @ Lim Mah Ee, simati yang tersebut boleh diberikan kepadanya sebagai salah seorang waris kadim.

**[4]** The second charge relates to false statements contained in the underlined portions of a statutory declaration dated *28 March 1992* affirmed by the appellant (exh P6). A copy of P6 was annexed to the second charge as *lampiran* A. P6 was used to support an application for a private caveat and the charge is as follows:

ii. *SECOND CHARGE: 83-697-2007*

Bahawa kamu pada 28 Mac 1992 di No. 25 Lebuh Light di Daerah Timur Laut di dalam Negeri Pulau Pinang, di dalam satu Akuan Berkanun yang diikrarkan oleh kamu di hadapan Pesuruhjaya Sumpah Encik Paul Thong, yang mana seorang penjawat awam dibenarkan di sisi undang-undang untuk menerima sebagai keterangan apa-apa nyataan, telah membuat pernyataan palsu dalam Akuan Berkanun tersebut sepertimana yang digariskan dalam Lampiran 'A' yang dilampirkan bersama dan pernyataan palsu tersebut adalah berkenaan dengan satu perkara material kepada tujuan Akuan Berkanun tersebut dan pernyataan palsu tersebut kamu tahu atau percaya adalah palsu atau tidak percaya sebagai benar. Oleh itu kamu telah melakukan satu kesalahan di bawah Seksyen 199 Kanun Keseksaan yang boleh dihukum di bawah cabang kedua kepada Seksyen 193 Kanun yang sama.

**[5]** The false statements referred to in P6 are set out below:

*Para. 1*

I am one of the descendants and beneficiaries of the estate of one Lim Mah Ee otherwise known as Baba Mahee (hereinafter referred to as the said deceased).

*Para. 6*

... Lim Hong Guan, the grandnephew of the said deceased.

*Para. 8*

... Kam Chin Neoh, the niece of the said deceased.

*Para. 9*

... Tan Chye Hun, one of the great grandnieces of the said deceased.

**[6]** On 5 August 2011, the appellant was acquitted and discharged by the magistrate's court at the close of the prosecution's case without the appellant being called to enter on his defence. On appeal to the High Court, the appellant was ordered to enter on his defence. However, on 10 June 2013, the magistrate's court acquitted and discharged the appellant at the conclusion of the trial.

**[7]** The prosecution appealed against the order of the magistrate's court acquitting the appellant. The appeal was allowed by the High Court and the appellant was convicted on both charges and sentenced to a total of 5½ years consecutive imprisonment term and a total fine of RM20,000 and further ordered to pay RM10,000 as costs for the prosecution.

**[8]** Leave to appeal to the Court of Appeal was obtained on 22 April 2015. This appeal came up for hearing before us on 28 March 2016. After hearing of submission of learned counsel for the appellant and learned deputy for the prosecution we allowed the appeal and acquitted and discharged the appellant on both charges.

DEFENCE RAISED BY THE APPELLANT TO CHARGES

**[9]** In refuting the alleged false statements referred to in paras 3 and 5 above, the appellant raised the following defences:

(a) para 5 of the petition was made based on the facts contained in the letter of administration *de bonis non* of the estate of Lim Mah Ee (exh D86) which stated: 'Letters of Administration with the said will annexed was granted to Lim Heong Guan the grandnephew of the said deceased who has since died without having fully administered the said estate';

(b) para 9 of the petition was made based on the content of the letter written by his grandfather, Yeoh Cheow Eang dated 19 June 1959 (exh P20) and

also the letters of administration *de bonis non* of the estate of Lim Mah Ee which was given to Tan Chye Hun (exh D87);

(c) para 12 of the petition was premised on the appellant being the 'waris kadim' to the Lim Mah Eee based on the letter of his grandfather, Yeow Cheow Eang (exh P15B(iv)). That based on exh P15B(iv), his grandfather is a descendant of Tan Chye Hun, who is the great grandniece to Lim Mah Ee;

(d) para 1 of P6 was made based on exh 15B(iv). Based on exh 15B(iv), his grandfather is a descendant of Tan Chye Hun, who is the great grandniece to Lim Mah Ee. Therefore, he is a descendant of Lim Mah Ee and is entitled to the estate;

(e) para 6 of P6 was based on exh D86 which 'Lim Hong Guan, the grandnephew of the said deceased';

(f) para 8 of P6 was based on the content of exh D87 which stated 'Kam Chin Neow, a niece of the deceased'; and

(g) para 9 of P6 was based on the content of exh D87 which stated 'Tan Chye Hun, one of the great grandnieces of the said deceased'.

## FINDINGS OF THE HIGH COURT

**[10]** In essence, the learned judicial commissioner ('JC') found that the defence of the appellant was a bare denial, wilful blindness and totally unacceptable. There was ample evidence which clearly indicated that the contents of exhs P8 and P6 were not true and that the appellant knew about it. The learned JC held that the trial magistrate had erred in law and in fact when she decided that based on the letter of administration *de bonis non* of the estate of Lim Mah Ee (exh D87) the appellant had reasons to believe that the contents of P8 and P6 are true.

## SUBMISSION OF PARTIES

### *The appellant's submission*

**[11]** The appellant took two main points at the hearing of the appeal. The first point relates to the argument that the exhs P8 (petition) and P6 (statutory declaration) were not produced in full. The second point relates to certain misdirections or non-directions in law and in fact by the learned JC warranting appellate interference.

**[12]** Learned counsel Gobind Singh Deo took up the first point. He argued that the petition marked as exh P8 is incomplete as it did not contain the four exhibits (marked as A, B, C and D) annexed to it. Exhibits A and B are the

'wasiat dan testamen akhir' of Baba Mahee @ Lim Mah Ee; exh C is the 'Surat Kuasa Mentadbir' dated 1 August 1878; and exh D is the 'Surat Kuasa mentadbir' dated 15 October 1883.

**[13]** Learned counsel argued that from a reading of paras 1–11 of exh P8 the contents are based on exhs A, B, C and D. They form the basis upon which the appellant made the said averments in exh P8. They are material not only for the purpose of exh P8 but also for the defence, especially in a case of an offence under s 199 of the Penal Code. As such, exh P8 is inadmissible.

**[14]** Exhibit P6 is also incomplete for the same reasons. There are two exhs 'A1' and 'A2' annexed to P6 in question. Exhibit 'A1' is a photocopy of a title deed whilst exh 'A2' are photocopies of the notices from the land office and the reply given by the appellant's grandfather. Both exhibits were never produced at the trial.

**[15]** In addition, learned counsel argued that P6 is not a statutory declaration because it does not contain the statutorily required words '... and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1960'. There is therefore (i) no compliance with ss 2 and 3 of the Statutory Declarations Act 1960 ('the SD Act 1960') and (ii) no compliance with the form in the schedule of Declaration Ordinance 1949. As such P6 is inadmissible (*JB Jeyaratnam v Law Society of Singapore* [1988] 3 MLJ 425; *Teh Kim Chooi v Regina* [1955] 1 MLJ 37; *Wong Hong Toy & Anor v Public Prosecutor* [1988] 2 MLJ 553). The learned trial magistrate did not call for the defence on this basis. The learned JC misdirected himself in failing to consider the appellant counsel's argument on this point.

**[16]** The second point for the appellant was taken up by learned counsel Dato' V Sithambaram. He argued that the conviction is unsafe because the evidence was not viewed objectively and that failure to do so will amount to a misdirection (*Gooi Loo Seng v Public Prosecutor* [1993] 2 MLJ 137 (SC); *Mohd Johi bin Said & Anor v Public Prosecutor* [2005] 5 MLJ 409; [2005] 1 CLJ 389 (CA)). Learned counsel alluded to the following misdirections:

(a) without any evidential basis, the learned JC found that Dato' Ong ('PW7') deliberately left out the declaratory words complained of in P6 so as to avoid future proceedings against the appellant. The learned JC also erroneously held that the omitted words were merely procedural despite clear law to the contrary and wrongly applied s 114(g) of the Evidence Act 1950 to the facts of the case;

(b) the learned JC wrongly refused to acknowledge the findings of the High Court in the kin inquiry (s 41(d) of the Evidence Act 1950; *Karam*

*Chand Ganga Prasad And Anr v Union of India (UoI) And Ors* AIR 1971 SC 1244);

(c) the learned JC erred in relying on the inscriptions on three tombstones (exhs P3, P4 and P5) to conclude that the appellant was not a beneficiary or next of kin of the estate (*Chia Hock Seng v Thor Keng Hong & Ors* [1970] 2 MLJ 12);

(d) the learned JC had wrongly drawn an adverse inference from the conduct of the appellant in seeing a lawyer PW7 in holding that the appellant '... does not even know that he is a descendant or beneficiary to the Estate' without considering that the appellant wanted to verify his legal rights to the estate and therefore his conduct was consistent with his innocence (*Tai Chai Keh v Public Prosecutor* [1948-1949] supp MLJ 105b);

(e) the learned JC failed to appreciate that the appellant's defence was not a bare denial. The appellant's own evidence and documents vide exhs P15, P20, D86 and D87, judgment in the kin inquiry (exh D88), the settlement agreements (P10 and P11) and advice of his solicitor (PW7) showed that the appellant had credible grounds to affirm P6 and P8. Notwithstanding the explanation supported by documentary evidence and witnesses the learned JC summarily dismissed the appellant's defence as a bare denial (*Kiew Foo Mui & Ors v Public Prosecutor* [1995] 3 MLJ 505; *Woolmington v The Director of Public Prosecutions* [1935] AC 462; *Chua Beow Huat v Public Prosecutor* [1970] 2 MLJ 29; *Public Prosecutor v Ling Tee Huah* [1982] 2 MLJ 324; *Chan King Yu v Public Prosecutor* [2009] 1 MLJ 457; [2009] 1 CLJ 601; s 156 of the Criminal Procedure Code);

(f) the learned JC erred in relying on exh P14 (Kyshe Law Report) to find that Kam Chin Neoh referred to in the letters of administration (D86 and D87) was not referred to in the editorial note, to find that without his relationship to Kam Chin Neoh, the appellant could not be a beneficiary or next of kin of Lim Mah Ee. The editorial note cannot take precedence over both the letters of administration *de bonis non* granted by a court of law to Kam Chin Neoh (D86) and Tan Chye Hoon (D87) respectively, wherein Kam Chin Neoh was described as the niece of the deceased;

(g) the learned JC failed to appreciate that this is a civil dispute as to who are the rightful beneficiaries to Lim Mah Ee @ Baba Mahee, who died in 1848. Various civil suits referred to in the settlement agreements P10 and P11 were commenced by the complainants PW11 and PW12 and their siblings. When all these suits failed, the appellant was charged with the offences after ten years from the police report. It should not have come to the criminal court (*Hardial Singh Hari Singh v Daim Zainuddin*

*& Ors* [1991] 1 CLJ 116);

(h) the learned JC's finding that the appellant wilfully caused a loss to the estate is erroneous as it is against the weight of the evidence led by the prosecution. The conditional agreement entered into between the appellant and Wayrex Sdn Bhd to sell the land belonging to the estate was conditional upon (i) the appellant applying and obtaining a grant of letters of administration to the estate of the deceased, and (ii) the court sanctioning the sale of the land at the agreed price. The market value for the sale was determined by a licensed valuer Messrs Rahim & Co, by a valuation report dated 29 November 1991; and

(i) in deciding to convict the appellant on the basis of the truth of the prosecution's case against the falsity of the defence story, the learned JC failed to give due consideration as to why even the defence story could not be believed, did not raise a reasonable doubt in the prosecution case. As such the learned JC failed to follow the *Radhi*'s direction thereby occasioning a miscarriage of justice (*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169; [1991] 3 CLJ 2073).

*The prosecution's reply*

**[17]** Learned deputy public prosecutor ('DPP') argued that the absence of the exhibits in question did not void the charges against the appellant. The prosecution is only relying on the underlined portions of the petition and P6 which did not refer to the exhibits. The other paragraphs of the petition and P6 which refer to the exhibits in question are not the subject of the charges. *Wong Hong Toy* was decided in a civil action in the context of an affidavit and not a statutory declaration.

**[18]** The settlement agreement (exh P11) was signed under duress. PW11 and PW12 testified that they were compelled by circumstances to sign it under duress. Further, the decision of the High Court in the kin enquiry (which found that the appellant together with PW11 and PW12 and their siblings to be beneficiaries and next of kin of the estate) is not binding in the criminal trial. If anything, it goes to mitigation only.

**[19]** Ultimately, the question is whether the appellant is a descendant and beneficiary of the estate of Lim Mah Ee. Learned deputy argued that the appellant is not. Despite this fact, the appellant had put himself out as a person capable of being an administrator when he was not entitled to do that.

A OUR DECISION

**[20]** Insofar as the first issue is concerned, it is not really in dispute that (i) P6 did not contain the statutorily declaratory words, and (ii) the exhibits in question were not attached to the petition and P6.

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**[21]** A declaration is a written statement giving information about something (*Oxford Advanced Learner's Dictionary* (5th Ed)). A statutory declaration is a written statement that allows a person to declare something to be true. So when a person makes a statutory declaration, that person is declaring that the statements in it are true. If a person intentionally makes a false statement in a declaration, he can be charged with an offence under the Penal Code.

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D **[22]** Section 2 of the SD Act 1960 prescribes that a statutory declaration ('SD') shall be in the form in the Schedule. We have scrutinised the SD and agree with learned counsel for the appellant that the SD is incomplete. The SD does not contain the vital words '... and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1960'.

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**[23]** In *JB Jeyaratnam*, the Privy Council held that the document in question was not a statutory declaration at all since it did not contain the vital words 'and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835'.

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**[24]** In *Teh Kim Chooi*, the appellant was convicted in the magistrate's court upon a charge of making a false statement in a declaration. On appeal it was argued that the declaration, the subject matter of the charge, was not in accordance with or in the form prescribed by the Declarations Ordinance 1949, as the words 'Declared at ... this ... day of ... before me' were left out. The High Court held that because of the said omission of the words from the declaration, the declaration was not a declaration within the meaning of s 199 of the Penal Code. It is not sufficient for a declarant simply to sign the declaration. He should actually declare it before the Justice of the Peace or Commissioner for Oaths before whom it is to be declared.

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**[25]** In *Wong Hong Toy*, the appellants were charged for having made a false declaration under s 199 of the Penal Code. The joint declaration in question bore the caption 'Statutory Declaration' but did not contain the words of solemn declaration as prescribed in the Schedule to the Statutory Declarations Act (Cap 13, 1970 Ed) of Singapore. The Singapore High Court held that two consequences followed. Firstly, the appellants' declaration in the joint declaration could not be deemed to be a declaration made by virtue of the

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provisions of the said Statutory Declarations Act. Secondly, the appellants' declaration could not be deemed to be such declaration as referred to in ss 199 and 200 of the Penal Code. A

**[26]** Consistent with the line of authorities above, we hold that P6 is not a statutory declaration within the meaning of the SD Act 1960. As such, the subject matter of the second charge is without foundation and is clearly unsustainable. For the foregoing reasons, we are constrained to hold that there was a misdirection in law and in fact on the part of the learned JC in convicting the appellant on the second charge as there is clearly no evidential basis to support the second charge. B C

**[27]** As for the first charge relating to the false statements in the petition P8, we agree with submission of learned counsel for the appellant that exh P8 is incomplete. In our view, an exhibit forming the subject matter of a charge under s 199 of the Penal Code must be exhibited in full. In this instance, it is not disputed that the four exhibits referred to in P8 were not produced. It is the duty of the prosecution to produce P8 in full in order to make out a prima facie case against the appellant. As the appellant can be convicted on the prima facie evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. There is no duty on the appellant to call any evidence (*Goh Ah Yew v Public Prosecutor* [1949] 1 MLJ 150 at p 153 (CA)). D E

**[28]** In *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 (FC), Augustine Paul JCA (as he then was) delivering the judgment of the Federal Court said at p 316: F

> [23] As the accused can be convicted on the prima facie evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. However it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt. Proof beyond reasonable doubt involves two aspects. While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case. Therefore a case can be said to have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided under s 182A(1) of the Criminal Procedure Code. That would normally be the position where the accused has given evidence. However, where the accused remains silent there will be no necessity to re-evaluate the evidence in order to determine whether there is a reasonable doubt in the absence of any further evidence for such a consideration. The prima facie evidence which was capable of supporting a conviction beyond reasonable doubt will constitute proof beyond reasonable doubt. G H I

**[29]** We have also scrutinised the appeal record and the judgment of the learned JC. We are inclined to agree with learned counsel for the appellant that the learned JC failed to comply with the *Radhi*'s direction and give reasons as to why even if the court did not accept or believe the defence explanation, why it nevertheless failed to raise a reasonable doubt on the prosecution's case.

**[30]** We also find that the findings of the learned JC was against the weight of the evidence. The learned JC was bound to, but did not view the whole of the evidence objectively and from all angles, with the result that the appellant had lost the chance which was fairly open to him of being acquitted. As such, this non-direction amounts to a misdirection. In these circumstances, a miscarriage of justice may well have occurred (*Gooi Loo Seng v Public Prosecutor*).

**[31]** Accordingly, we allowed the appeal and acquitted and discharged the appellant.

*Appeal allowed; appellant acquitted and discharged.*

Reported by Dzulqarnain Ab Fatar